



1751

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Vishnupad et al. Examiner: Brian P. Mruk
Serial No.: 09/730,627 Group: Art Unit 1751
Filed: December 6, 2000 Docket: 370-19
Dated: October 29, 2002

For: ANHYDROUS CREAMS, LOTIONS AND GELS

Assistant Commissioner for Patents
Washington, D.C. 20231

AMENDMENT TRANSMITTAL FORM

Sir:

Transmitted herewith is an amendment in the above-identified application.

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- [] Small entity status of this application under 37 C.F.R. § 1.9 and 1.27 has been established by a verified statement previously submitted.
- [] A verified statement to establish small entity under 37 C.F.R. § 1.9 and 1.27 is enclosed.
- [] No additional fee is required.

The fee has been calculated as shown below:

	(Col. 1)		(Col. 2)		(Col. 3)	SMALL ENTITY		OTHER THAN SMALL ENTITY
	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NO. PREVIOUSLY PAID FOR		PRESENT EXTRA	ADDIT. RATE FEE	OR	ADDIT. RATE FEE
TOTAL	36* MINUS	36**		0 =	X 9 \$		X 18	\$ 0
INDEP.	3* MINUS	3**		0 =	X 42 \$		X 84	\$ 0
□ FIRST PRESENTATION OF MULTIPLE DEP. CLAIM					X 140 \$		X 280	\$ 0
					TOTAL		OR TOTAL	\$90.00
					ADDIT. FEE	\$ 0		

* If the entry in Co. 1 is less than entry in Col. 2, write "0" in Col. 3.
** If the "Highest No. Previously Paid for" IN THIS SPACE is less than 20, enter "20".
*** If the "Highest No. Previously Paid For" IN THIS SPACE is less than 3, enter "3".
The Highest No. Previously Paid For" (Total or indep.) is the highest number found in the appropriate box in Col. 1 of a prior amendment or the number of claims originally filed.

CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postpaid in an envelope, addressed to the: Assistant Commissioner of Patents, Washington, D.C. 20231 of October 29, 2002

Dated October 29, 2002

Peter DeLuca

- ☐ Please charge Deposit Account No. 50-2140 in the amount of \$____. Two (2) copies of this sheet are enclosed.
- ☐ A check in the amount of \$ _____ is enclosed.
- ☒ Please charge any deficiency as well as any other fee(s) which may become due under 37 C.F.R. § 1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s) to Deposit Account No. 50-2140. Also, in the event any extensions of time for responding are required for the pending application(s), please treat this paper as a petition to extend the time as required and charge Deposit Account No. 50-2140 therefor. TWO (2) COPIES OF THIS SHEET ARE ENCLOSED.

Respectfully submitted,



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Handwritten notes: #310, DVA, NG, 11/6/02

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RESPONSE TO OFFICE ACTION

In response to the Office Action mailed on August 30, 2002, reconsideration of this application is respectfully requested in view of the following remarks.

Claims 1, 2, 5, 7-9 and 11-40 are pending in the application.

Claims 1, 2, 5, 7-9, 11-16, 21, 23, 24, 27-34 and 39 have been rejected under 35 U.S.C. §102(e) as being anticipated by Cen et al. U.S. Patent No. 6,428,799 (hereinafter referred to simply as "Cen"). In addition, claims 17-20, 22, 25, 26, 35-38 and 40 have been rejected as being obvious in view of Cen. These rejections are respectfully traversed.

Cen fails to teach or suggest compositions that are substantially anhydrous as that term is used in the present claims. As noted at page 3, lines 3-7, the term "substantially anhydrous" means that "no free water is added to the composition". The only water present, if any, in the presently claimed substantially anhydrous compositions is the water of hydration contained in the various components used to formulate the product. Rather than being substantially anhydrous, the Cen compositions referred to in the Office Action each include free added water.

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The Office Action specifically mentions Examples 65, 66 and 67 of Cen. The formulations for these examples appear at column 61 of Cen. Water is the third ingredient in Part A of the applied Cen formulations. In example 65, 4.43 percent of free water is added and in each of Examples 66 and 67, 3.00 percent of free water is added. Thus, the Cen compositions are not substantially anhydrous.

Nor is it seen where in Cen it is suggested that water can be excluded from the compositions disclosed therein. Rather, in Examples 65-67, Cen uses a polyacrylamide as a polymer gelling agent. However, Cen's polymeric gelling agents form hydrogels in a conventional manner which involves the use of water or other aqueous medium and/or neutralizing the polymers. For example, at column 31, line 64 through column 36, line 3 Cen discusses the "Hydrogel Forming Polymeric Gelling Agents" useful in his products. In comparison, at page 6, lines 6-9 of Applicants' specification it is noted that the ability to use a polyacrylamide without being dispersed in an aqueous media or neutralized is a surprising result of the present compositions. This surprising aspect of the present compositions is nowhere taught or suggested by Cen.

It is not surprising that Cen's compositions are not the same as applicants' compositions since the intended end uses of the compositions are quite different. Cen's compositions are intended for application to a substrate to produce a substantially dry, disposable personal care article. Applicant's compositions are intended for use as cosmetic or medicinal compositions for direct application to the skin of a user. While it appreciated that the intended uses are not recited in the claims presently being examined, consideration of the intended uses is believed relevant to a consideration of what one skilled in the art reading Cen would or would not find to be obvious.

Because Cen does not teach or suggest compositions which are substantially anhydrous, withdrawal of the rejections of claims 1, 2, 5, 7-9, 11-16, 21, 23, 24, 27-34 and 39 under 35 U.S.C. §102(e) and claims 17-20, 22, 25, 26, 35-38 and 40 have been rejected under 35 U.S.C. §103 in view of Cen is respectfully requested.

In view of the foregoing, this application is believed to be in condition for allowance. Such early and favorable action is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Peter DeLuca', with a long horizontal flourish extending to the right.

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